

Ad Hoc Alliance for Public Access to 911

Alliance for Technology Access•Arizona Consumers League•National Consumers League•World Institute on Disability•National Emergency Number Association-California Chapter•Crime Victims United•Justice for Murder Victims•California Cellular Phone Owners Association•Florida Consumer Fraud Watch•Center for Public Interest Law•Consumer Action•Consumer Coalition of California•Consumers First•California Alliance for Consumer Protection•Californians Against Regulatory Excess•The Office of Communication of the United Church of Christ•Utility Consumer Action Network•Children's Advocacy Institute

March 30, 1998

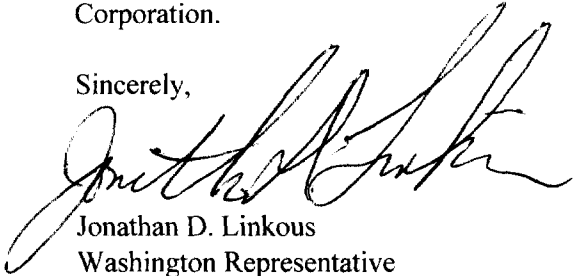
Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554-0001

re: CC Docket 94-102, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems

Dear Ms. Salas:

Enclosed are the reply comments of the Ad Hoc Alliance to comments filed regarding the Petitions for Reconsideration filed by the Cellular Telecommunications Industry Association and BellSouth Corporation.

Sincerely,



Jonathan D. Linkous
Washington Representative

enclosure

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's Rules to)	CC Docket No. 94-102
Ensure Compatibility with Enhanced)	
911 Emergency Calling Systems)	

**REPLY COMMENTS OF
THE AD HOC ALLIANCE FOR PUBLIC ACCESS TO 911**

The Ad Hoc Alliance for Public Access to 911 (the "Alliance") hereby files its "Reply Comments" to the comments filed by Rural Telecommunications Group, AT&T Wireless Services, Inc., Bell Atlantic and PrimeCo Personal Communications, L.P. (collectively sometimes hereinafter called "certain CMRS carriers") in support of the "Petition for Reconsideration" filed by BellSouth Corporation ("BellSouth") and the "Petition for Reconsideration and Clarification" filed by the Cellular Telecommunications Industry Association (the "CTIA") (collectively referred to hereinafter as the "Petitions") in connection with the Commission's *Memorandum Opinion and Order* issued with respect to the above-captioned proceeding.¹ The Alliance will also briefly address some of the points raised by comments filed by others.

¹ *Memorandum Opinion and Order*, FCC 97-402 (Dec. 23, 1997), 63 Fed. Reg. 2631 (Jan. 16, 1998) (hereinafter referred to as the "*Reconsideration Order*").

There is no dispute that the Commission has made an informed decision based on well defined policy objectives in both *E911 First Report and Order*² and the *Reconsideration Order*. However, certain CMRS carriers once again moan that the Commission failed to select the best alternative and did not fully appreciate the consequences of its decision. Through this veil of tears one can see that the essence of the CMRS argument is that they should not be freighted with social obligations because they are private businesses subject to market place controls. The intellectual foundation for the deregulatory movement in this country was based on the premise that regulation was far from a perfect instrument for imposing more efficient rules than the market place. A powerful economic theory, called the model of perfect competition, describes the conditions under which a market is efficient. For the purposes of our discussion, three characteristics of a competitive market are salient: (1) many buyers and sellers; (2) costless bargaining over contract terms; and (3) full information about the service provided.³ The shortfall from the ideal of perfect competition in the CMRS market is cause for grave concern. There are few sellers who, gifted with the free use of billions of dollars of the public's spectrum, are able to command a market price which results in a return on investment that would make a blue chip NYSE company executive weep with joy.

THE ALLIANCE IS NOW CONVINCED THAT THE COMMISSION SHOULD TAKE UP AND CONSIDER THE ISSUE OF CMRS LIABILITY

The CMRS contract limitation of liability provisions is a formidable mass of dense

² In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996).

³ See: R. Cooter and T. Ulen, *Law and Economics*, (1988), chapter 6.

prose. Consumers lack the information to evaluate the risk involved. Bargaining with carriers over such terms is impossible for consumers and shopping for alternative liability terms among competing carriers is probably not worth the effort. Thus, the limitation of liability provisions in CMRS contracts fall seriously short of costless bargaining. As a result, the forces of competition cannot be brought to bear upon contractual terms allocating loss for carriers' negligence.

Since it is evident that there has been a complete failure in the consumer's ability to shop for liability terms, displacing the market to fix these terms promises greater efficiency. The Commission has decided that the most efficient remedy is to leave the solution in the hands of the States. The certain CMRS carriers' argument that State law does not protect the carriers against events over which they have no control, ignores the element of causation which is a sine qua non of tort liability. It is the misinformation given to consumers by CMRS carriers about the limits of service and coverage that forms the basis for present litigation and cases on the horizon. Such litigation should have the salutary effect of inducing disclosure about the true limits and limitation of the service actually provided. Thus, litigation, or the threat of litigation, is itself an efficient cure for insufficient consumer information.

The comments from the State of Hawaii gives credence to the remedy selected by the Commission. However, we are persuaded by the balance of the comments that the Commission should accept the invitation of certain CMRS carriers to regulate carrier liability. The comments from The Texas Advisory Commission on State Emergency Communications show that the political process is vulnerable to distorted arguments that misapply a monopoly regulatory model to CMRS carriers. We would argue that the Commission is better suited to make the policy

allocating the risk between consumer and carrier. Since the CMRS carriers have invoked the LEC analogy as a basis for limited liability, it is appropriate to apply the same type of regulatory oversight to CMRS carriers.

COSTS RECOVERY AND TECHNOLOGY CHOICES

A particular subtlety arises because the rapid evolution of competing location technologies promises to provide significant incremental income streams to those who control such systems. Such income could be applied to alleviate PSAP expenses or further stuff the CMRS swollen coffers. Certain CMRS carriers ask the Commission to increase their already substantial leverage by giving them the exclusive right to select the technology. The PSAPs argue since they will be responsible for providing public funds to pay for these systems, it is the PSAP which should select and own the equipment. The Alliance is concerned that the process of a negotiated compromise will systematically distort public goals and impose costs on the general public.

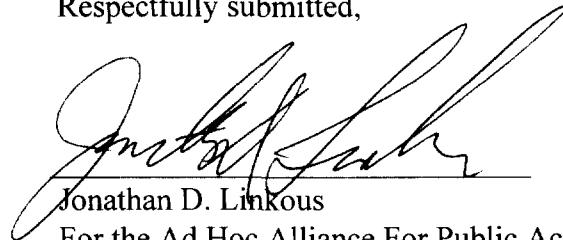
It appears that there are no large economies of scale that efficiency demand a single ALI provider. Several suppliers evidently have the ability to rapidly deploy systems today that will meet or exceed Phase II standards. Handset based ALI equipment is under rapid development. All this activity is in anticipation of substantial consumer demand for a variety of location services. The Alliance has suggested that the Commission consider an open market when evaluating policy alternatives. This solution is certain to please no one but the consumers. However, there are many practical advantages to enabling private industry pay for and market ALI services. The deployment of ALI systems will be accelerated and more service, at a lower cost, will be available to consumers.

THERE IS NO BASIS FOR THE GRANT OF A STAY

All commentators, except certain CMRS carriers, agree that there is no legal or factual grounds for a stay of the Commission's decision. The tradition of hostility of CMRS carriers to their public service obligations has created a quid pro quo mentality which demands that something be given for compliance. There is a point when argument ends and the parties respect the Commission's policy decisions. We have passed that point.

There has been careful Commission systematic analysis of the very arguments raised by the Petitions and echoed in the comments filed by certain CMRS carriers. However, it is increasingly evident that the Commission's reliance on a balancing of interests between CMRS carriers, PSAPs and the States is not going to protect the public's interest to the extent that it must. The Alliance recommends that the Petitions be rejected but that the Commission further consider in another proceeding the issue of CMRS liability and competition in the ALI market.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jonathan D. Linkous", written over a horizontal line.

Jonathan D. Linkous

For the Ad Hoc Alliance For Public Access to 911

March 30, 1998